

ORIGINAL
FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUL 12 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

CHARLES EDWARD MORSE,

Petitioner,

v.

CASE NO. 05-CV-71374-DT

HONORABLE LAWRENCE P. ZATKOFF

JAY M. SAMUELS,

Respondent.

ORDER DENYING A CERTIFICATE OF APPEALABILITY

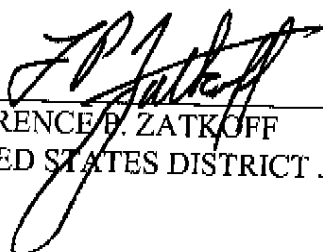
Petitioner Charles Edward Morse has appealed the Court's dismissal of his habeas corpus petition. The Court must treat Petitioner's notice of appeal as an application for a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

"[A] prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, [the] petitioner must first seek and obtain a [certificate of appealability]." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. . . . When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack, 529 U.S. at 484.

The Court dismissed Petitioner's habeas petition without prejudice because it purported to be a criminal complaint against a detective sergeant of the Michigan State Police and because Petitioner conceded that he had not raised his claims in state court. Reasonable jurists would not debate whether the Court was correct in its procedural ruling and whether the petition states a valid claim of the denial of a constitutional right. Accordingly, the Court **DECLINES** to issue a certificate of appealability.



LAWRENCE E. ZATKOFF
UNITED STATES DISTRICT JUDGE

Date: JUL 12 2005